GLOBAL SETTLEMENT NEGOTIATION PROCEDURES, TECHNIQUES AND STRATEGIES FOR CONTRACTS IN DISPUTE

BY

CHARLES W. FANSHAW

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ABBREVIATIONS

AROICC	Assistant Resident Officer In Charge Of Construction
ASBCA	Armed Services Board Of Contract Appeals
DOD	Department of Defense
EFD	Engineering Field Division
FAR	Federal Acquisition Regulation
NAVCOMPT	Comptroller of the Navy
NAVFAC P-68	Naval Facilities Engineering Command Publication P-68
NAVFACENGCOM	Naval Facilities Engineering Command
NARSUP	Navy Acquisition Regulation Supplement
OICC	Officer In Charge Of Construction
ROICC	Resident Officer In Charge Of Construction

CHAPTER 1

INTRODUCTION

In this report the negotiation procedures, techniques and strategies for attempting global settlement of a contract in dispute will be studied. A global settlement is one in which all outstanding issues of a contract are settled and agreed upon in a comprehensive change. No formal manual exists to guide the Government team through the global settlement procedure. Since the procedures of other departments or acquisition commands may vary, only the Naval Facilities Engineering Command contracting procedures, regulations and rules will be studied. The global negotiation is usually a higher level negotiation between senior acquisition officials and the principal company officers of the contractor. Therefore, inclusion of field personnel in the negotiations is limited, but the information and assistance they provide in preparing for the negotiation is essential. In developing this report, actual case studies from the Officer in Charge of Construction (OICC), Naval Facilities Engineering Command Contracts, TRIDENT, St. Marys, Georgia were used.

This report will explain when to use global settlement, how to get started, and how to select the negotiation team. Also, recommendations on how to review and analyze the issues, prepare the Government positions and clearance documents, and what may occur during the negotiation will be studied. The object of this report is to provide a reference for others to use in the future.

CHAPTER 2

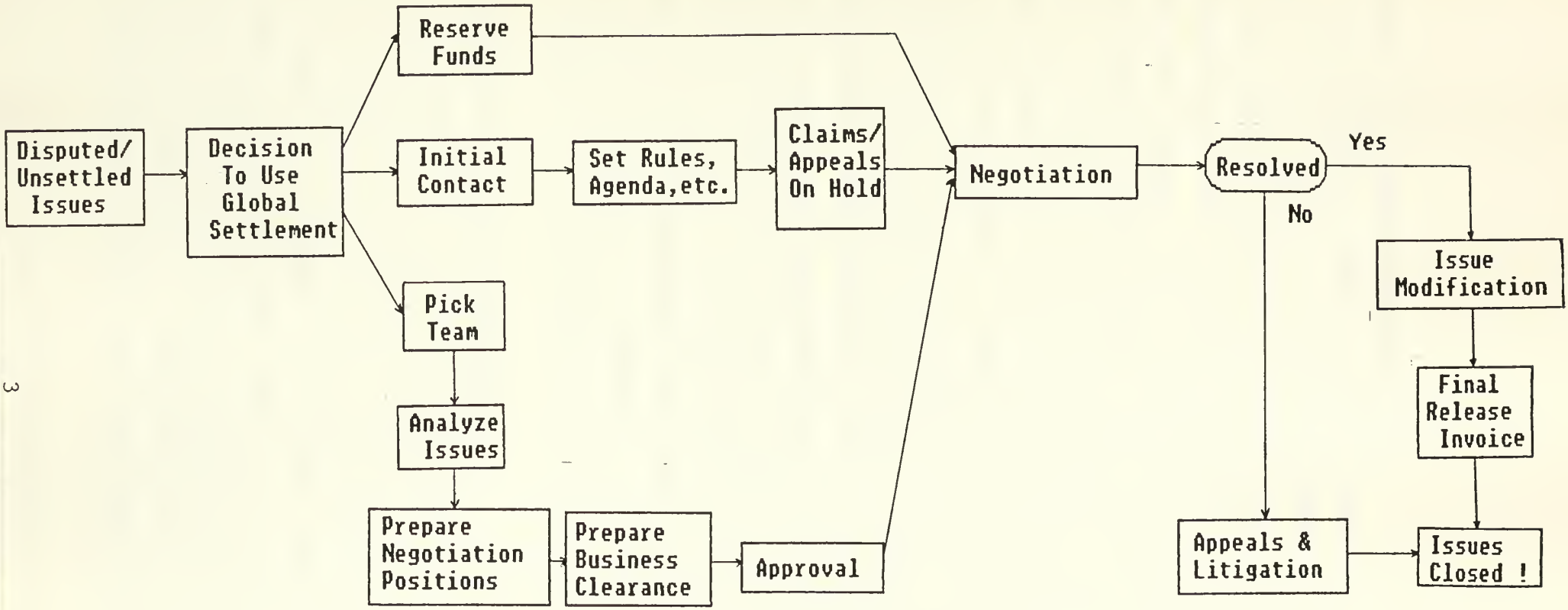
WHY A GLOBAL SETTLEMENT

Paragraph 2.1 - When to Consider

The global settlement procedure may be the last alternative to litigation. The procedure provides both parties the opportunity to view the outstanding issues of a contract in a "detached" or macroscopic way. Because of this, the strengths and weaknesses of each issue can be viewed in relation to the "big picture" of the entire contract and a settlement can hopefully be reached. There are many factors to consider when deciding if a global settlement is appropriate. The most common factors that would indicate the need for a global settlement are: 1) contract work is complete; 2) an impasse has been reached in settling the major issues; 3) a number of unsettled claims and/or appeals exist; and 4) Government counterclaims exist. The dollar amount of the contract also tends to influence the decision to use a global settlement procedure. Large dollar contracts are considered first, because there is more at risk and they offer the greatest potential for reducing the Government's liability. All of the cases studied for this report where multi-million dollar contracts. However, there is no reason that the techniques and procedures discussed in this report could not be used for a smaller sized contract. Figure 2.1 is a flow chart of the global settlement process.

Fig. 2.1

Global Settlement Process Flow Chart



Paragraph 2.2 - How Did We Get Here

Many paths can lead to global settlement. The most common is the inability of the contractor and the Government to reach agreement upon changes and interpretations. Disputes are a part of contracting that deal with this inability to agree. All of the cases studied had modifications (change orders), where the parties could not agree on the price and/or time extension. As a result these issues lingered until the end of the contract and remained unresolved as disputes. Personality conflicts can also compound simple issues into major disputes. When the field superintendent/project manager and the Government representative (ROICC/AROICC, project engineer, etc.) do not work well together, the potential for disputes can increase. If the Government was forced to correct work that contractor refused to correct, or if the contractor failed to pay his utility bill, the Government may have a counterclaim pending against the contractor. Regardless, the global settlement is a result of disputes that arise during the contract.

Paragraph 2.3 - What Is At Stake

It would appear that only the value of the contractor's and Government's claims and issues are at stake. However, there is more than just that. The contractor probably has not closed the contracts out with his subcontractors. If the contract is not closed, then the subcontractors have not received their final payments and they may have lawsuits against the contractor. The contractor may also consider the time value of money. If a settlement could be reached

now, it could far outweigh any court victory several years from now. Also, any amount the contractor might win in court would be reduced by attorney fees. The Government also must consider the time value of money. A settlement now would avoid the cost of litigating the claims/appeals over the following years. In addition, the interest charges required by the Contract Disputes Act may be substantial and should be considered in the time value of money calculations.

Paragraph 2.4 - What Is Included

If a global settlement is considered, careful consideration should be given as to what will be included in the settlement discussions. As the term "global" suggests, everything should be considered. However, there may be circumstances where a particular issue is too controversial for even the global settlement arena. As a general rule, all outstanding issues (claims, appeals, counterclaims, and unilateral modifications) should be included in the settlement negotiations. When proposing the slate of issues to the contractor, every known issue, including the controversial ones, should be included. There is always the possibility that an agreement can be reached that will include these issues.

Paragraph 2.5 - Why Settle

The need to settle outstanding issues in a global settlement is primarily a business decision. For the contractor and the Government, a settlement offers the

opportunity to close out the contract now. If a settlement is not reached, the potential liability of loss on certain issues must be considered when the contractor makes business decisions affecting the company's future. On the other hand, if a settlement is reached the contractor can move on. In some cases, global settlement is the best solution because neither side has a strong position on the issues. The alternative to settlement is litigation. Again the question of risk must be addressed. Since there is never a "sure winner" in litigation, the risk of losing must be balanced against the cost of settlement. The main point is that global settlement is an option that should be considered when analyzing a course of action for disposition of a contract in dispute.

CHAPTER 3

HOW TO GET STARTED

Paragraph 3.1 - Defining the Issues

Once the decision to attempt a global settlement has been made, all other efforts to settle individual issues should cease so that the negotiation team will have a full range of "give and take" issues on which to base their negotiation strategy. An initial letter should be sent to the contractor expressing the Government's willingness to enter into closeout negotiations and asking the contractor to request that closeout negotiations be scheduled. A list of issues as the Government understands them should be included with the letter. This letter should be prepared by the Contracts Division and signed out by the division head or the head of the Acquisition Department. See Appendix A for sample letters.

Paragraph 3.2 - Quantifying the Issues

As noted above, a list of outstanding issues must be included in the letter to the contractor. The list should include all appeals, claims, unresolved change orders, and Government counterclaims such as non-conforming work, liquidated/actual damages, and unpaid utility bills. A dollar value and time extension (if applicable) must be included for each issue. Care should be taken to ensure that the most recent data is used when assigning the dollar value. These values may have changed as the issue evolved. The contractor will be asked to verify that the list of

issues is complete and accurate. If needed, the contractor may add or delete issues from the list. The contractor must also verify that there is no duplication or overlap between claims. This ensures that the cost of an issue will only be counted once. Further, the contractor should be asked to verify that no additional claims are to be made. This is to ensure that no surprise issues are brought into the negotiations.

Paragraph 3.3 - Appeals, Claims and Interest on Hold

As noted in paragraph 1, the Government's letter to the contractor, invites the contractor to request that settlement negotiations be held. As a measure of good faith, the contractor should also hold all litigation in abeyance, and that accrual of interest on all claims be suspended until the completion of negotiations. At that time, if the negotiations are unsuccessful the litigation would proceed and interest would again accrue. The following is an example of the language used in the Government's initial letter:

> The Navy is willing to enter into settlement discussions of all outstanding issues for the purpose of closing out the subject contracts. To that end, you should submit a letter to the Contracting Officer, proposing such talks be commenced for the purpose of closing out the contracts. Your letter should request that all proceedings on pending litigation be held in abeyance pending the further discussion and state whether you will agree there shall be no accrual of interest on your claims against the subject contracts.

It would appear that the Government is trying to stack the deck against the contractor. However, the claims and appeals are the contractors and only the contractor can request that they be held in abeyance. If the contractor is

serious about trying to reach a settlement, holding litigation and interest in abeyance while the negotiations proceed should be no problem. The contractor is not giving up his rights to proceed with the claims at a later time.

Paragraph 3.4 - Rules of Negotiation

Once the contractor has replied to the initial Government letter, some rules should be established for conducting the negotiations. The following rules have been successfully used at several global negotiations:

1. The representatives will have the authority to settle issues, but they can consult with others not in the meeting before making a final agreement.
2. Attorneys will not be present at the meeting but office space can be provided for the contractor's attorney or private telephone access to the attorney.
3. The rules of evidence normally used in a hearing will not apply.
4. Questions may be asked to better understand the other side's statements.
5. The parties should be prepared to back up statements with documentation if requested.
6. No recordings will be made of the discussions. However, notes can be taken provided they are destroyed within 10 days after the discussion.
7. Any offer or statement made as part of the settlement discussions cannot be used for any other purpose in any other proceeding.

8. Any document prepared for exclusive use in the discussion cannot be used by the other party for any other purpose in any other proceeding.

These rules have been found to be fair and provide protection to both parties. The rules allow each side to make their "best offer" without fear that it could be used against them later. Depending on the contractor, rule 2 may have to be modified to permit attorneys to participate directly in the discussions. If at all possible, the inclusion of attorneys should be discouraged. Since the discussions should focus on technical and cost issues, as they relate to the construction work, a more productive session will occur with only engineering, construction and contract personnel present. It should be emphasized that private phone access or nearby office space will be available. If the contractor insists that his attorney be present, it would be prudent to include a Government attorney on the negotiation team.

Paragraph 3.5 - Proposed Agenda

In addition to providing the contractor with the proposed rules, the Government should also furnish a list of Government representatives and an agenda for the contractor's consideration. Information on selecting the negotiation team will be covered in Chapter 3. The agenda should specify the date and location of the settlement negotiations. For planning purposes, an estimate of the time required should be provided. The agenda outline should be brief and somewhat flexible in its wording. After the

introductions, approximately 1 hour should be allotted for the contractor to make his opening presentation. A 20 or 30 minute break should follow the contractor's presentation. This break will allow the Government team a chance to quickly review the contractor's opening position and make any adjustments to their opening position. Next, 1 hour should be scheduled for the opening presentation by the Government. A 1 to 1 and a half hour lunch break will give both sides time to review the opening positions. After lunch, 3 or 4 hours should be scheduled for settlement discussions. The schedule for the second or third days should simply be "continue settlement discussions." On the last day, 1 hour should be set aside for a wrap up. A sample letter providing the proposed rules, agenda, and representatives is provided in Appendix B.

Paragraph 3.6 - Authority to Negotiate

As with any contracting action, the global settlement procedure must follow all applicable contracting regulations. The appropriate approvals must be obtained to conduct the negotiation. The requirements of the Federal Acquisition Regulation (FAR), the Department of Defense (DOD) FAR Supplement, the Navy Acquisition Regulation Supplement (NARSUP), and the NAVFAC P-68, Contracting Manual must be carefully reviewed and complied with. Since the total value of the issues of many global settlements exceeds $100,000, the P-68 requirements for a pre-negotiation business clearance apply. If claims are involved in the global settlement, the contracting officer who issued the

final decision must be involved. If the claim exceeds $250,000, NAVFACENGCOM must approve in accordance with P-68, Sect. 33-221. Unless the total of the settlement issues is small, the Engineering Field Division (EFD) or NAVFAC Contracting Division must be involved to ensure that all regulations are satisfied.

CHAPTER 4

SELECTING THE NEGOTIATION TEAM

Paragraph 4.1 - Chief Negotiator

As important as any aspect of the negotiation process, is the selection of the negotiation team. The most important individual in the team is the chief negotiator. This individual will be primary point of contact between the Government and the contractor. During the actual discussions, the chief negotiator will be the one directing the Government team, with the other members taking their leads from him. Since the negotiations are supposed to be "high level", the chief negotiator should be a senior person in the organization. In the cases studied, the chief negotiator was the Deputy OICC (an O-6 or senior O-5) or the Assistant OICC for Acquisition (a senior O-5). These individuals had extensive negotiation experience and where senior enough to deal effectively and authoritatively with the president or other senior official representing the contractor.

Paragraph 4.2 - Contract Specialist

The complexity of the rules and regulations that apply to Government contracting make the need obvious for having at least one contract specialist on the negotiation team. In addition to providing advice to the team, the contract specialist also adds the viewpoint of an independent analyst. The majority of the team members will have technical backgrounds. However, the contract specialist

usually does not have a technical background and can evaluate issues "from the record", as a judge would. This detached view can provide alternative interpretations that the technical review may overlook. The contract specialist should be a skilled negotiator, who can work well with a team and is not intimidated by high pressure negotiations.

Paragraph 4.3 - Field (ROICC) Personnel

The inclusion of field (ROICC) personnel on the negotiation team is critical. The team member from the ROICC office brings a special viewpoint to the negotiation team. This viewpoint may be very critical of the contractor's positions. Since the ROICC deals with contractors every day they may be "hardened" or vehement in their opinions. Care must be exercised in selecting the team member from the ROICC office. If an individual was heavily involved with the contract while the work was going on, he is probably not a good choice. The reason is that he cannot objectively review the issues because he was personally involved in them. Many of the issues in dispute now, were the result of the inability to reach agreement earlier. Involving the same person now, would have few positive effects. If possible, it is desireable to use a person who had some limited involvement with the contract. A good example is an AROICC/engineer who was involved with the job at the end, and had to process and analyze the claims. This person would be familiar with the contract and the contractor, but would not be emotionally tied to the issues. Reducing the emotional level during the negotiation

is one way to achieve a settlement. The goal is to look at the facts and not be swayed by emotions. The officer or engineer who is selected for the team must be able to explain how decisions are made and accept the criticism of the other team members as the issues are analyzed. This individual should be knowledgeable of field practices, because he will be the field "expert." He should also be an experienced negotiator.

Paragraph 4.4 - Officer/Civilian Mix

There does not appear to be any definite formula for determining the mix of officers and civilians on the negotiating team. An officer headed the negotiation teams in all of the cases reviewed. In one case two additional officers were on the team, in another case only one other officer was on the team, and in the third case no other officers were on the team. The largest negotiation team had six members and the smallest had four. It appears that the officer/civilian mix differs from contract to contract and is only based on the contributions that can be made by the individuals.

Paragraph 4.5 - Legal Staff

As mentioned in Chapter 3, having the attorneys participate in the discussions should be avoided if at all possible. However, by no means should the legal staff be overlooked. Their participation is essential to the formulation of the Government positions and the assessment of litigative risk. In order to fully evaluate the

Government's liability on the issues the in-house counsel or trial attorney must be consulted. In most cases their concurrence is required before negotiations commence.

Paragraph 4.6 - Clerical/Computer Support

While not a part of the negotiations, the clerical staff is a very important element of the team makeup. Sufficient clerical/typing resources must be made available to the team when they are analyzing the issues and preparing the negotiation positions. At least one sheet must be typed up for each issue, and the compilation of the business clearance memorandum requires a large amount of typing too. In addition to typing support, computer support must also be available. A personal computer and a spreadsheet program are invaluable tools to the negotiation team. With the computer, the team is able to quickly recalculate the values of each issue and the revised "bottom line." The computer should not be kept in the negotiation room. It should be nearby so revisions can be entered during a break. After returning from a break, the Government team will know exactly where they stand in relation to their objective price. Having this quick calculation capability can be an advantage during complex negotiations, especially if the contractor does not have a computer with them. The spreadsheet program that was used in the cases studied was Microsoft EXCEL. This program is very powerful and flexible.

CHAPTER 5

REVIEWING AND ANALYZING THE ISSUES

Paragraph 5.1 - Assigning the Issues

After the contractor and the Government have agreed on the list of outstanding issues, the negotiation team must review and analyze each issue. This is one of the most important steps in the settlement process. The success of the negotiations is directly related to the time spent reviewing the issues beforehand. For that reason, it is essential that the team members be given adequate time to analyze the issues. Each team member, except the chief negotiator will be assigned a certain number of issues to review and analyze. If the ROICC member was deeply involved in an issue, he should be excluded from preparing the review on that issue. This will allow for a more independent review and will remove any bias that would have been present. The ROICC member will have his chance to voice any objections when the negotiating positions are developed. The chief negotiator will not normally analyze any individual issues because he will be reviewing all of the issue papers prepared by the team. Each issue should be reduced to a one or two page summary. The format of this summary is explained in detail in the following paragraphs.

Paragraph 5.2 - Contractor Issues

Generally, the largest group of outstanding issues are those raised by the contractor. By custom and habit those

issues are usually analyzed first, since the Government is already familiar with their own issues. The format presented in this report is the same that was used in the case studies. A folder should be prepared for each issue. In addition to the issue summary sheet, all pertinent documents (letters, test results, memoranda, and photographs) should be placed in this file for ready reference. Appendix C contains several examples of contractor issue summary sheets.

Paragraph 5.2.1 - Contractor Position

The contractor's position should be briefly stated in this paragraph. Only include enough detail to understand the basis of the contractor's argument, a thorough explanation will be included in the analysis. The contractor's proposed cost and time extension request should match the numbers contained on the list of outstanding issues developed earlier.

Paragraph 5.2.2 - ROICC Position

The ROICC's position should be stated next. Again, only include enough detail to understand the basis of the ROICC position. Specification references, interpretations, or letters that were relied upon in forming this position should also be included in this paragraph. Care should be taken not to try to analyze the issue at this point, only present the information that the ROICC used. If the ROICC position has been affirmed by issuance of a contracting officer's final decision, note the decision number in this

section. If the ROICC feels that the contractor is due cost or time, it should be stated in this paragraph. If the ROICC position includes no cost or time, that should be noted too.

Paragraph 5.2.3 - Analysis

The next section should be the detailed analysis of the issue. The reviewer should state whether he agrees with the contractor or ROICC position and explain why. If both parties are only partially correct in their positions, he should also explain that, too. The strengths and weaknesses of each parties argument should be listed and a quick cost and time analysis should be preformed if needed. If the reviewer feels that a different cost, time or quantity is more appropriate, he should include that in his write-up. This is the most critical section of the review sheet and the reviewer needs to thoroughly understand the issue because he may have to explain and defend his position to the rest of the team later. Some documents that will assist in preforming the analysis are claims write-ups for final decisions and "Rule 4" files that are prepared for ASBCA appeals.

Paragraph 5.2.4 - Initial Position

After carefully analyzing the issue, the review should develop the initial negotiation position for the issue. The initial position may be zero, it may agree completely with the contractor, or it may be some figure in between. The initial position recommended should follow logically from

the analysis. A cost estimate should be developed if the position is different from the others. It should be remembered that the initial position is not the final objective, but merely a figure on the edge of reasonableness.

Paragraph 5.2.5 - Negotiation Objective

The last section of the summary sheet that must be developed is the negotiation objective. The reviewer should figure the objective position based on the weaknesses in the Government position. The objective should be the figure that the reviewer reasonably expects the issue to be settled for considering all arguments. At this point in time, the reviewer does not have to consider the risk of losing in court. The subject of litigative risk will be covered later in this chapter. In developing the objective position, the position taken in a final decision must be considered. In some cases that position should not be compromised.

Paragraph 5.3 - Government Issues

The next set of issues that must be reviewed are those presented by the Government. The same format should be followed in preparing the summary sheets for the Government issues as was used for the contractor issues. In some cases the contractor knows very little about the Government issues and the Government should be prepared to document or support its position on these issues. If the basis of cost for the issue was another contract, that contract should be reviewed to determine if all charges are applicable. Separate

contracts are usually used when the contractor fails to complete the work in a timely or correct manner and the Government completes or corrects the work using another contract. These "follow-on" contracts generally contain some amount of extra work that cannot be charged to the original contractor. To avoid embarrassment during negotiations, it is necessary to remove these "extra" costs when preparing the summary sheet positions.

Paragraph 5.4 - Other Issues

There are other complex issues that may become involved in the global settlement process. These issues include extended overhead, acceleration, and assessment of liquidated damages. These issues usually cannot be attached to any single disputed issue, but are interrelated with many varied issues. These other issues are generally associated with time extensions or late completion. To simplify negotiations, it is helpful to discuss them separately.

Paragraph 5.4.1 - Extended Overhead

If a contractor is due a time extension, he may also be entitled to compensation for the extra cost of staying on the job longer. This is commonly referred to as extended overhead and may include home office costs in addition to field overhead expenses. As a contractor submits claims for time extensions, he may include a rate for extended overhead. Since these claims are submitted singularly, there is no easy check to ensure that no duplication of costs is being made. However, when all issues are studied in the global settlement, it is much easier to determine if

the time extensions requested are concurrent with each other. For that reason, extended overhead applied to time extensions needs to be reviewed separately from the individual issues so a fair cost is obtained.

Paragraph 5.4.2 - Acceleration

Schedule acceleration is a very complex issue that can be raised by the contractor. The inclusion of acceleration in the negotiation discussions can cloud the issues very quickly, because acceleration is rarely tied to just one event. The Government rarely directs a contractor to accelerate, it is the actions or inactions of the Government that will lead the contractor to claim "constructive acceleration." As a result, the issue of acceleration must be evaluated separately and a negotiation position should be established for it.

Paragraph 5.4.3 - Liquidated Damages

If the contract was completed late, a provision in the contract allows the Government to assess liquidated damages. In some cases, liquidated damages are replaced by actual damages. In either case, for damages to be assessed, the contractor must have been late in finishing the work. Usually the contractor has submitted enough time extension requests that would eliminate any damage assessment. However, in preparing the initial negotiation position, liquidated damages cannot be overlooked. This may be an easy point of negotiation, but it is not one that should be ignored.

Paragraph 5.5 - Litigative Risk

The final element that must be considered in preparing the issue summary sheet is the risk of losing the issue in court. This review must be preformed by the in house counsel or trial attorney. The idea of this review is to assign a loss percentage to the issue considering the strength of the case. A strong case that the Government would most likely win would have a small percentage assigned. Conversely, a weak case that the Government might lose, would have a large percentage assigned. Since no case is a guaranteed winner, a good rule of thumb is to assign a minimum of ten percent risk to each issue. This risk percentage and the dollar value it represents should be included as a separate entry in the negotiation objective section of the issue summary sheet. Appendix D contains a sample risk assessment.

CHAPTER 6

DEVELOPING THE GOVERNMENT POSITIONS AND STRATEGY

Paragraph 6.1 - Developing Positions

After the files have been assembled and reviewed for each issue, it is time for the negotiation team to meet and develop negotiation positions on the issues. As mentioned earlier, an extremely useful tool in preparing these positions is the computer spreadsheet. Two of the cases studied have extensively used Microsoft EXCEL as their spreadsheet program. This program worked very well for this purpose and presents the information in a neat printout. The team must safeguard all information concerning the negotiation positions. Many of the cases reviewed, had the potential of costing millions of dollars. For that reason, all information concerning the negotiation positions is FOR OFFICIAL USE ONLY, and should be considered administratively confidential. All files, computer disks, printouts, and papers should be locked up at the end of the day or work session.

Paragraph 6.2 - Initial Position

In most of the cases reviewed the initial position roughly paralleled the previous Government position on an issue. There were instances where the negotiation team or the contracting officer disagreed in whole or in part with the previous position, and a new initial position was developed. The initial positions for each issues were listed on the issue summary sheets. The initial positions

(cost and time) are transferred to a spreadsheet. An initial extended overhead rate is used for calculating compensable time extensions and if appropriate liquidated damages are charged. The appropriate markups are applied and the initial bottom line position is obtained. Figure 6.1 is an example of an initial position spreadsheet.

Paragraph 6.3 - Intermediate Positions

An intermediate or counter offer may be prepared prior to negotiation. The advance counter offer is part of the negotiation strategy that will be discussed in more detail later in this chapter. This counter offer may or may not be used, depending on the particular circumstances of the negotiation. Usually, the initial positions taken by the Government are very conservative. Therefore, in the counter offer, time, cost, and extended overhead on contractor issues are increased to a more appropriate level. Also, Government counter claims could be reduced to near the minimum levels. Instead of showing the contractor the "same old thing", the counter offer can demonstrate to the contractor that the Government is serious about trying to reach a settlement. This counter offer may be the catalyst to advancing the negotiation discussions and may encourage the contractor to compromise on other issues. Other counter offers should be developed during the negotiations. It would be a waste of time trying to come up with several counter offers prior to negotiations, since no one knows how the discussions will progress. Figure 6.2 is an example of a counter offer spreadsheet.

Paragraph 6.4 - Objective Without Litigative Risk

The negotiation objective without risk was developed for each issue based upon a realistic, relatively objective, technical analysis of each issue as to its merit, cost, and time. The objective without risk is listed for each issue on the summary sheet. These cost and time figures are also entered onto a spreadsheet for ease of calculation. This is the Government's technical "bottom line" without considering the risk of litigation. In the contracts reviewed, the objective did not include any liquidated damages, since adequate time had been given to the contractor at this point. Also, Government counter claims had been reduced to a minimum, based on well defined costs only. Figure 6.3 is an example of negotiation objectives without risk.

Paragraph 6.5 - Objective With Litigative Risk

The negotiation team will attempt to reach a settlement at or below the objective without risk. However, the true negotiation objective must include the risk assessment for each issue. The ultimate negotiation objective for each issue is the greater of the litigative risk or the objective without risk. If the Government essentially agrees with the contractor's position, there is no need to provide a risk assessment. The sum of the probabilistic net risk (objective with risk) should be added to other issues that are non-contentious to result in the total negotiation objective for the settlement discussions. Appendix D contains the sample of the risk probability assessment.

Recovery on Government counter claims is totally limited to the litigative risk assessment. The result of this process is the Government's true "bottom line" position which is entered onto a separate spreadsheet, like Figure 6.4.

Paragraph 6.6 - Other Risks

The above objective provides the Government's bottom line. However, settlement discussions should not be terminated without considering the risk of additional costs associated with preparing contracting officer's final decisions, litigation costs, and interest penalties in the event of loss. These costs can be quite large, so they need to be considered. If negotiations break down, the amount of other risk associated with the contract, may justify exceeding the negotiation objective. Appendix E contains examples of how the other risk costs were calculated for some of the contracts studied.

Paragraph 6.7 - Negotiation Strategy

Now that the Government has developed its negotiation objectives, the strategy to obtain these objectives must also be developed. As noted earlier in this report, considerable emotion may be associated with many of the issues that are to be discussed. The Government negotiation team was selected with the belief that it was sufficiently removed from the original circumstances to remain objective. However, the attitude of the contractor is difficult to predict. In the cases reviewed, the Government developed its strategy assuming that the contractor would not be as

objective. Accordingly, the Government will discuss the issues in general, but will not attempt to reach agreement on each and every issue. Discussion of the issues and their costs may be necessary to understand the price and time extensions being offered and counter offered. Using this methodology of avoiding the details, it is expected that a fair and reasonable settlement can be reached. Both the contractor and the Government, will provide starting points for negotiation with their opening presentations. Depending on the circumstances and the contents of the contractor's opening position, the Government may acknowledge that the contractor is due some time, and agree to a time extension. The Government may also offer its prepared counter offer. Following this, it remains a matter of gradual concessions on more contentious issues until an acceptable price is reached. Hopefully this price will be below the objective without risk. If this is not possible, the team will try to get the price below the objective with risk. If this to is unsuccessful, the team will need to meet with the OICC, or the approving officer, to discuss the situation. The other risks mentioned in paragraph 6.6 should be considered in the final business decision to continue or not.

Santa Fe Global Settlement Initial Position

	CONTRACTOR'S COSTS														
		KT		PRIME COST		SFE EXOHD		SUB COST		CECI	READY	SECO	LAMAS	ADJUST	TOTAL
No.	DESCRIPTION	DAYS				$1,358				$440	$750	$1,264	$1,004	FACTOR	
A1	Unsuitable Mat'l/Dewatering	25	*	$5,000		25	*	$43,535		25					$102,371
A2	Revise Construction Limits	0		$0		0		($25,624)		0	0	0	0		($27,903)
A3	Column Moment Connection	14	*	$5,665	*	14	*	$2,439							$29,765
A4	Road Thickness					5								$6,480	$1,057
A5	Install Add'l Roof Drains				*	5								$7,241	$296
A6	Waterline Encasement				*	10								$14,482	$592
A7	Unsuitable Mat's Polaris Road				*	6								$8,689	$356
A8	Wall Girts @ Vert Lift Door		*	$2,170	*	14								$20,275	$3,129
A9	Earth Forms for Footers			($21,716)											($23,019)
A10	ICCB Masonry Walls														$0
A11	Dispose Excess Soil							$7,651							$8,331
A12	Acceleration														$0
A13	Floor Piping MPW														$0
A14	MPW Field Painting														$0
A15	Duct Offsets														$0
A16	Road Crossing/Ductbank														$0
A17	Thermal Manhole	7				7		$13,540			7	7			$40,648
A18	Unsuitable Soil MPW Pkg Lot														$0
A19	Insulated Metal Wall Panels							$73,089							$79,589
A20	Ground Girdle														$0
A21	Motorized Dampers														$0
A22	Gov't Equipment for FET's														$0
A23	Differential Pressure Switch														$0
A24	Tie-in Irrigation														$0
A25	Opposed Blade Dampers							($3,500)							($3,811)
A26	Non-Warranty Work							$420							$457
A27	Crane Envelop Insulation														$0
A28	Relocate Motorized Dampers														$0
A29	Interest on MPW Retention														$0
A30	Temp Power Ltr dtd 3/25/85														$0
A31	Structural Steel Design														$0
A32	Weather Jan 86	3													$0
A33	Cancel Mech Schooling 6 Times							$412							$449
A34	Interest on Metal Wall Panels														$0
					D	86			D	25	7	7	0		
			COST	($8,881)	$	$116,788	COST	$111,962	$	$11,000	$5,250	$8,848	$0	$57,167	$212,307
	OICC TRIDENT EXPENSES														
B1	HVAC Deficiencies			$89,516											
B2	Repairs to Grounding Girdle			$70,300											
B3	Utility Charges			$317,519											
B4	Actual Damages, Late Completion			$378,560											
	Days to Contract	49	COST	$855,895											
*	Negotiated Values														

Fig. 6.1

Santa Fe Global Settlement Initial Position

					"Contractor's Cost A1Thru A34"			OICC TRIDENT Expenses					
	Days Late	81			Prime Cost		($8,881)	B1 Thru B4		$855,895			
	Days of Actual Damages	32			Prime EXOHD		$116,788						
	Damages Per Day	$11,830			HO OH @4.72%		$5,512					OICC $	$855,895
	Actual damages	$378,560			SUB Cost		$111,962					SFE	$212,307
					SUB EXOHD		$25,098					GLOBAL	($643,588)
					PR OH SUB 2.62%		$3,742						
					Subtotal		$254,221					KT Value	$13,336,559
					Profit @ 6%		$15,253					Paid	$12,406,260
					Subtotal		$269,474					Check to	$286,712
					Adjust Factor		$57,167						
					Total		$212,307						

Santa Fe Global Settlement Counter Offer

	CONTRACTOR'S COSTS														
		KT		PRIME COST		SFE EXOHD		SUB COST		CECI	READY	SECO	LAMAS	ADJUST	TOTAL
No.	DESCRIPTION	DAYS				$1,358				$440	$750	$1,264	$1,004	FACTOR	
A1	Unsuitable Mat'l/Dewatering	57													$0
A2	Revise Construction Limits														$0
A3	Column Moment Connection	14													$0
A4	Road Thickness													$6,480	($6,480)
A5	Install Add'l Roof Drains													$7,241	($7,241)
A6	Waterline Encasement													$14,482	($14,482)
A7	Unsuitable Mat's Polaris Road													$8,689	($8,689)
A8	Wall Girts @ Vert Lift Door													$20,275	($20,275)
A9	Earth Forms for Footers														$0
A10	ICCB Masonry Walls														$0
A11	Dispose Excess Soil														$0
A12	Acceleration														$0
A13	Floor Piping MPW														$0
A14	MPW Field Painting														$0
A15	Duct Offsets														$0
A16	Road Crossing/Ductbank														$0
A17	Thermal Manhole	7													$0
A18	Unsuitable Soil MPW Pkg Lot														$0
A19	Insulated Metal Wall Panels														$0
A20	Ground Girdle														$0
A21	Motorized Dampers														$0
A22	Gov't Equipment for FET's														$0
A23	Differential Pressure Switch														$0
A24	Tie-in Irrigation														$0
A25	Opposed Blade Dampers														$0
A26	Non-Warranty Work														$0
A27	Crane Envelop Insulation														$0
A28	Relocate Motorized Dampers														$0
A29	Interest on MPW Retention														$0
A30	Temp Power Ltr dtd 3/25/85														$0
A31	Structural Steel Design														$0
A32	Weather Jan 86	3													$0
A33	Cancel Mech Schooling 6 Times														$0
A34	Interest on Metal Wall Panels														$0
					D	0			D	0	0	0	0		
			COST	$0	$	$0	COST	$0	$	$0	$0	$0	$0	$57,167	($57,167)
	OICC TRIDENT EXPENSES														
B1	HVAC Deficiencies														
B2	Repairs to Grounding Girdle														
B3	Utility Charges														
B4	Actual Damages, Late Completion														
	Days to Contract	0	COST	$0											
*	Negotiated Values														

Fig. 6.2

Santa Fe Global Settlement Counter Offer

			"Contractor's Cost A1Thru A34"		OICC TRIDENT Expenses				
Days Late	81		Prime Cost	$0	B1 Thru B4	$0			
Days of Actual Damages	81		Prime EXOHD	$0					
Damages Per Day	$11,830		HO OH @4.72%	$0				OICC $	$0
Actual damages	$958,230		SUB Cost	$0				SFE	($57,167)
			SUB EXOHD	$0				GLOBAL	($57,167)
			PR OH SUB 2.73%	$0					
			Subtotal	$0				KT Value	$13,336,559
			Profit @ 6%	$0				Paid	$12,406,260
			Subtotal	$0				Check to	$873,133
			Adjust Factor	$57,167					
			Total	($57,167)					

	CONTRACTOR'S COSTS														
		KT		PRIME COST		SFE EXOHD		SUB COST		CECI	READY	SECO	LAMAS	ADJUST	TOTAL
No.	DESCRIPTION	DAYS				$2,217				$440	$750	$1,264	$1,004	FACTOR	W/O RISK
A1	Unsuitable Mat'l/Dewatering	57	*	$5,000		57	*	$43,535		57			0		$220,291
A2	Revise Construction Limits							($25,624)							($27,903)
A3	Column Moment Connection	14	*	$5,665		14	*	$2,439				7	7		$60,402
A4	Road Thickness					7				2				$6,480	$11,705
A5	Install Add'l Roof Drains					5								$7,241	$5,064
A6	Waterline Encasement					10								$14,482	$10,127
A7	Unsuitable Mat's Polaris Road					6								$8,689	$6,077
A8	Wall Girts @ Vert Lift Door		*	$2,170		14								$20,275	$16,478
A9	Earth Forms for Footers			($2,000)											($2,120)
A10	ICCB Masonry Walls														$0
A11	Dispose Excess Soil							$7,651							$8,331
A12	Acceleration														$389,789
A13	Floor Piping MPW							$1,326							$1,444
A14	MPW Field Painting	10				10		$38,954			10	10			$88,959
A15	Duct Offsets							$4,200							$4,574
A16	Road Crossing/Ductbank							$5,168							$5,628
A17	Thermal Manhole	7				7		$13,540			7	7			$47,323
A18	Unsuitable Soil MPW Pkg Lot														$0
A19	Insulated Metal Wall Panels							$146,178							$159,179
A20	Ground Girdle														$0
A21	Motorized Dampers														$0
A22	Gov't Equipment for FET's														$0
A23	Differential Pressure Switch							$1,814							$1,975
A24	Tie-in Irrigation														$0
A25	Opposed Blade Dampers							($3,500)							($3,811)
A26	Non-Warranty Work							$420							$457
A27	Crane Envelop Insulation														$0
A28	Relocate Motorized Dampers														$0
A29	Interest on MPW Retention														$0
A30	Temp Power Ltr dtd 3/25/85														$0
A31	Structural Steel Design														$0
A32	Weather Jan 86	5													$0
A33	Cancel Mech Schooling 6 Times							$824							$897
A34	Interest on Metal Wall Panels														$0
					D	130			D	59	17	24	7		
	Days to Contract	93	COST	$10,835	$	$288,210	COST	$236,925	$	$25,960	$12,750	$30,336	$7,028	$57,167	$1,004,866
	OICC TRIDENT EXPENSES			W/O RISK		W RISK									
B1	HVAC Deficiencies			$17,903		$8,952									
B2	Repairs to Grounding Girdle			$7,030		$7,030									
B3	Utility Charges			$259,686		$91,665									
B4	Actual Damages, Late Completion			$0		$0									
			COST	$284,619		$107,646									

Fig. 6.3

Santa Fe Global Settlement Offers

	NAVY		SANTA FE		NAVY		NAVY		NAVY	
	INITIAL POSITION		INITIAL POSITION		COUNTER OFFER		NAVY OBJ. WO/RISK		NAVY OBJ. W/RISK	
ISSUES	Amount	Days	Amount	Days	Amount	Days	Amount	Days	Amount	Days
1 Unsuitable Mat'l/Dewatering	$102,371	25	$378,466	57			$220,291	57	$220,291	57
2 Revise Construction Limits	($27,903)	0	$369,621	56			($27,903)		$184,811	28
3 Column Moment Connection	$29,785	14	$67,174	21			$60,402	14	$60,402	14
4 Road Thickness	$1,057		$16,888	0			$11,705		$11,705	0
5 Install Add'l Roof Drains	$296		$9,904	0			$5,064		$5,064	0
6 Waterline Encasement	$592		$9,329	0			$10,127		$10,127	0
7 Unsuitable Mat's, Polaris Rd	$356		$4,895	0			$6,077		$6,077	0
8 Wall Girts @ Vert Lift Door	$3,129		$28,754	0			$16,478		$16,478	0
9 Earth Forms for Footers	($23,019)		($2,000)	0			($2,120)		$0	0
10 ICCB Masonry Walls	$0		$123,046	38			$0		$24,609	8
11 Dispose of Excess Soil	$8,331		$374,652	21			$8,331		$93,663	5
12 Acceleration	$0		$3,897,887	0			$389,789		$389,789	0
13 Floor Piping in MPW	$0		$1,590	0			$1,444		$1,444	0
14 MPW Field Painting	$0		$973,059	100			$88,959	10	$97,306	10
15 Duct Offsets	$0		$17,046	0			$4,574		$4,574	0
16 Road Crossings/Ductbank	$0		$99,134	8			$5,628		$9,913	1
17 Thermal Manhole	$40,648	7	$337,510	70			$47,323	7	$77,627	16 ~~7~~
18 Unsuitable Soil MPW Pkg Lot	$0		$110,750	26			$0		$19,935	5
19 Insulated Metal Wall Panels	$79,589		$462,322	0			$159,179		$184,929	0
20 Ground Girdle	$0		$149,382	30			$0		$25,395	5
21 Motorized Dampers	$0		$277,348	75			$0		$27,735	8
22 Gov't Equipment for FET's	$0		$48,663	0			$0		$4,866	0
23 Differential Pressure Switch	$0		$2,152	0			$1,975		$1,975	0
24 Tie-in Irrigation	$0		$1,087	0			$0		$109	0
25 Opposed Blake Dampers	($3,811)		($3,967)	0			($3,811)		$0	0
26 Non-Warranty Work	$457		$542	0			$457		$457	0
27 Crane Envelop Insulation	$0		$1,701	0			$0		$170	0
28 Relocate Motorized Dampers	$0		$13,135	0			$0		$1,314	0
29 Interest on MPW Retention	$0		$7,091	0			$0		$0	0
30 Temp Power Ltr dtd 3/25/85	$0		$6,883	0			$0		$688	0
31 Structural Steel Design	$0		$50,320	30			$0		$10,064	6
32 Weather Jan 86	$0	3	$0	5			$0	5	$0	5
33 Cancel Mech Schooling 6 Times	$449		$1,124	0			$897		$897	0
35 Interest on Metal Wall Panels	$0		$3,316	0			$0		$0	0
	$212,307	49	$7,838,804	537			$1,004,866	93	$1,492,414	16 ~~7~~ 156
1 HVAC Deficiencies	$89,516		$0				$17,903		$8,952	
2 Repairs to Grounding Girdle	$70,300		$0				$7,030		$7,030	
3 Utility Charges	$317,519		$91,666				$259,686		$91,665	
4 Actual Damages, Late Completion	$378,560		$0				$0		$0	
	$855,895		$91,666				$284,619		$107,646	
Total	($643,588)	49	$7,747,138	537			$720,247	93	$1,384,768	16 ~~7~~ 186

Fig. 6.4

Santa Fe Global Settlement Negotiation Ojective

Actual Damages Based on Risk							
Days to Kt with Risk	167	"Contractor's Cost A1Thru A34"		OICC TRIDENT Expenses			
Days Late	81	Prime Cost	$10,835	B1 Thru B4	$284,619	Negotiation Objective	
Days of Actual Damages	-86	Prime EXOHD	$288,210	OICC w/Risk	$107,646	with Risk	
Damages Per Day	$11,830	HO OH @4.72%	$13,604			OICC $	$107,646
Actual damages	$0	SUB Cost	$236,925			SFE	$1,492,414
Logical Days of Damages	0	SUB EXOHD	$76,074			GLOBAL	$1,384,768
		PR OH SUB 2.73%	$8,545				
		Subtotal	$634,192			KT Value	$13,336,559
Actual Damages Based on No Risk		Profit @ 6%	$38,052			Paid	$12,406,260
Days to Contract	93	Subtotal	$672,244			Check to	$2,315,068
Days Late	81	Adjust Factor	$57,167				
Days of Actual Damages	-12	Acceleration	$389,789			Negotiation Objective	
Damages per Day	$11,830	Total	$1,004,866			without Risk	
Actual Damages	$0	Total w/R	$1,492,414			OICC $	$284,619
Logical Days of Damages	0					SFE	$1,004,866
						GLOBAL	$720,247
						KT Value	$13,336,559
						Paid	$12,406,260
						Check to	$1,650,546

Santa fe Settlement Risk Analysis

	CONTRACTOR'S COSTS								
		KT	NEGO		R	I S	K	NEGO	OBJ.
No.	DESCRIPTION	DAYS	OB. W/O R		$$$	%	DAYS	WITH	RISK
A1	Unsuitable Mat'l/Dewatering	57	$220,291		$0		0	$220,291	57
A2	Revise Construction Limits		($27,903)		$184,811	50	28	$184,811	28
A3	Column Moment Connection	14	$60,402		$0		0	$60,402	14
A4	Road Thickness		$11,705		$0		0	$11,705	0
A5	Install Add'l Roof Drains		$5,064		$0		0	$5,064	0
A6	Waterline Encasement		$10,127		$0		0	$10,127	0
A7	Unsuitable Mat's Polaris Road		$6,077		$0		0	$6,077	0
A8	Wall Girts @ Vert Lift Door		$16,478		$0		0	$16,478	0
A9	Earth Forms for Footers		($2,120)		$0		0	$0	0
A10	ICCB Masonry Walls		$0		$24,609	20	8	$24,609	8
A11	Dispose Excess Soil		$8,331		$93,663	25	5	$93,663	5
A12	Acceleration		$389,789		$0		?	$389,789	0
A13	Floor Piping MPW		$1,444		$0		0	$1,444	0
A14	MPW Field Painting	10	$88,959		$97,306	10	10	$97,306	10
A15	Duct Offsets		$4,574		$1,705	10	0	$4,574	0
A16	Road Crossing/Ductbank		$5,628		$9,913	10	1	$9,913	1
A17	Thermal Manhole	7	$47,323		$77,627	23	16	$77,627	16
A18	Unsuitable Soil MPW Pkg Lot		$0		$19,935	18	5	$19,935	5
A19	Insulated Metal Wall Panels		$159,179		$184,929	40	0	$184,929	0
A20	Ground Girdle		$0		$25,395	17	5	$25,395	5
A21	Motorized Dampers		$0		$27,735	10	8	$27,735	8
A22	Gov't Equipment for FET's		$0		$4,866	10	0	$4,866	0
A23	Differential Pressure Switch		$1,975		$0		0	$1,975	0
A24	Tie-in Irrigation		$0		$109	10	0	$109	0
A25	Opposed Blade Dampers		($3,811)		$0		0	$0	0
A26	Non-Warranty Work		$457		$0		0	$457	0
A27	Crane Envelop Insulation		$0		$170	10	0	$170	0
A28	Relocate Motorized Dampers		$0		$1,314	10	0	$1,314	0
A29	Interest on MPW Retention		$0		$0		0	$0	0
A30	Temp Power Ltr dtd 3/25/85		$0		$688	10	0	$688	0
A31	Structural Steel Design		$0		$10,064	20	6	$10,064	6
A32	Weather Jan 86	5	$0		$0		0	$0	5
A33	Cancel Mech Schooling 6 Times		$897		$0		0	$897	0
A34	Interest on Metal Wall Panels		$0		$0		0	$0	0
	Days to Contract	93	$1,004,866					$1,492,414	167
	OICC TRIDENT EXPENSES								
B1	HVAC Deficiencies		$17,903		$8,952			$8,952	
B2	Repairs to Grounding Girdle		$7,030		$7,030			$7,030	
B3	Utility Charges		$259,686		$91,665			$91,665	
B4	Actual Damages, Late Completion		$0		$0			$0	
			$284,619					$107,647	
	Total	93	$720,247				Total	$1,384,767	167

CHAPTER 7

PREPARE PRE-NEGOTIATION DOCUMENTS

Paragraph 7.1 - Pre-negotiation Business Clearance

Before the negotiations can begin, certain requirements must be met. If the negotiation objective exceeds $100,000, NAVFAC P-68 requires the submission of a business clearance. The business clearance is a stand alone document that demonstrates that the Government has used good business judgement in developing the pre-negotiation objective. The clearance records the facts and rationale considered in arriving at the objective. The exact contents and composition of the clearance are determined by the governing instruction for the command involved. In the cases studied for this report, OICC Trident Instruction 4310.1 is applicable and is the format discussed. Most of the information that is required in the clearance should have been prepared while the issues were being analyzed and the negotiation positions were being developed. A copy of each issue summary sheet and position spreadsheet should be included. Additionally, the rationale and logic used to arrive at the positions must be discussed. If applicable, a profit analysis must be preformed. Once the clearance has been assembled, the appropriate approvals must be received. Refer to Appendix D of NAVFAC P-68 for approval authority.

Paragraph 7.2 - Reservation of Funds

Another important step that must be completed before negotiations can begin is the need for adequate funding.

With few exceptions, sufficient funds must be reserved to cover the negotiation objective before any discussions can commence. The process of requesting and reserving funding can take time, so the initial request should be forwarded as soon as a rough cost figure is known. As changes occur in the amount of funds needed, this information should also be provided to the appropriate fund manager. If Military Construction funds are involved, NAVFACENGCOM will probably be involved, too. The negotiation team needs the full support of the project management staff in this effort.

Paragraph 7.3 - Approval to Negotiate

The final step in preparing for negotiations, is receiving approval and authority to negotiate. As mentioned in previous chapters, this authority may come form a variety of sources, depending upon the number, value, and types of issues involved. For example, when claims are involved, the contracting officer who issued the final decision must concur with the position taken on that issue. If the claim exceeds $250,000, approval of NAVFACENGCOM is needed. In every case, careful review of the types of issues involved is necessary to ensure compliance with contracting regulations. In this regard, the assistance of the contracts division is critical.

CHAPTER 8

THE NEGOTIATION

Paragraph 8.1 - The Setting

After all the preparations have been made and all of the approvals have been received, it is time to concentrate on the actual negotiation. A professional setting is very important to the conduct of the negotiation. Every effort must be made to demonstrate to the contractor that the Government is serious about trying to settle. In several of the cases reviewed, the settlement negotiations were not conducted until two and a half years after work on the contract had been completed. If the Government appears sincere in its efforts, the contractor may be more willing to compromise. The dress of the Government team members should be nothing but professional. Officers wore the service dress blue or summer white uniform. The civilian team members wore business suits. The room chosen should be sufficiently large to accommodate all of the participants. In addition to a large conference table and comfortable chairs (the discussions can last for hours), a small table for coffee, soda, and water should be provided. The setup of the room can be very important too. During negotiations on one of the cases studied, all aerial progress photos were taped, in chronological order, on the wall behind the Government team. Several issues related to the site and the timing of certain events. Instead of searching the files for photographs, the Government very easily and quickly countered the contractor's argument because the photos were

already out. The issue was ended quickly, without much discussion or emotion. In addition to photographs, the site plan and layout were also displayed for easy use and reference.

Paragraph 8.2 - Private Area for the Contractor

As mentioned in the rules of negotiation, a private area must be provided for the contractor. As a business courtesy, the office provided should not be near the negotiation room or the office used by the Government team. The contractor can use this area to caucus and discuss their positions in private. The area provided must also have long distance phone access. Frequently, the contractor must consult with the home office, an attorney, or subcontractors during the course of discussions, and the phone is a necessity.

Paragraph 8.3 - Opening Presentation by the Contractor

Following the itinerary provided, the contractor will give his opening position first. The intent of the opening presentations is to provide the parties a chance to briefly review their positions with the other party and to update their positions as needed. The contractor starts off in some cases by thanking the Government for the opportunity to meet, and then begins his presentation by blasting the Government for its handling of the contract. Unfortunately, in two of the cases reviewed, the contractors took over 3 hours to present their positions and changed nothing. The contractors also tried to address specifics right from the

start, a tactic which must be avoided. It was necessary in these cases to encourage the contractor to move on with the presentation and save the specifics for later. At this point in the negotiation, the Government team should only ask questions to clarify a position. Detailed questions and discussions should follow the opening presentations.

Paragraph 8.4 - Opening Presentation by the Government

Following the contractor presentation and the break, it is time for the Government to give its opening presentation. Since in none of the cases studied was the contractor's initial position acceptable, the opening presentation was still required. The presentation started with the chief negotiator providing to the contractor a copy of the initial position spreadsheet. This spreadsheet was "sanitized" and only contained the initial position cost and time figures, and bottom line. The sheet was carefully reviewed to ensure that no "objective" information was included on it. Providing the contractor with the spreadsheet puts the Government agenda in control of the discussions, because the contractor will use and markup the sheet as the talks progress and use it as a basis for concessions. The chief negotiator should go through each item on the spreadsheet and briefly review the Government's initial position with the contractor. Sample spreadsheets were shown as Figure 6.1.

Paragraph 8.5 - Give and Take Discussions

Following the opening presentations, the actual negotiation discussions will commence. As mentioned in the negotiation strategy in Chapter 6, every effort must be made to avoid getting bogged down in the specifics. When an issue got bogged down, the chief negotiator on one contract tabled that issue and moved on to another. This allowed everyone's emotions to cool down and reduced the tension in the room. The actual course of events varied between the cases studied, but several important negotiation concepts were noted and will be discussed in more detail below.

Paragraph 8.5.1 - Different then "Regular" Negotiations

The first concept that must remain with the negotiators, is that this is not a "regular" negotiation. The stakes are higher and the parties involved are at a higher level. The contractor's negotiator may be very different from the superintendent who conducted all of the previous negotiations. The tactics and attitudes may also be different and unnerving at times. It is essential that a professional attitude be maintained.

Paragraph 8.5.2 - Expand "Reasonableness"

The object of any negotiation is to reach a fair and reasonable settlement as to the cost and time involved. In the global settlement, the object is still the same. However, the participants must be willing to expand the idea of reasonableness. Circumstances or results that would normally would be rejected as unreasonable, must be

evaluated again to determine if some degree of reasonableness exists. Using this expanded view of what is reasonable, may allow the Government team to accept compromise positions that are offered by the contractor. The negotiation team must take the time to study the issues from every angle, in hopes that a "reasonable" position can be found.

Paragraph 8.5.3 - Settlement, Not Litigation

A final idea that the Government team must carry with them as the negotiations continue, is that the primary reason for conducting the negotiations is to attempt to reach a settlement. If at all possible, a settlement is desired to litigation of the issues. Every effort should be exhausted to reach agreement. However, the integrity of the negotiations cannot be compromised. The contractor must justify his positions and the Government team should not "give it away" just to settle.

Paragraph 8.6 - Contractor Tactics

During the course of the negotiations, the Government team should expect the contractor to employ many different negotiation tactics. By using these tactics, the contractor hopes to gain some advantage in the discussion or convince the Government of his position. Some of them will be very subtle, while others will be quite noticeable. In most cases, the contractor's negotiators are not the same individuals who participated in earlier negotiations. They also bring many years of experience with them. The

Government team should not be intimidated by the contractor's tactics, but should expect them as part of the course of events. Several of those encountered repeatedly are reviewed in more detail in the following paragraphs.

Paragraph 8.6.1 - Subcontractors

The reason offered the most for not compromising on an issue, is the inability to obtain agreement from the subcontractor. Subcontractors are involved in many issues and the contractor usually meets with the subcontractors before coming into negotiations. The subcontractors provide the contractor with their positions on the issues, usually in the form of a bottom line number. The contractor will combine these numbers with his own in developing his objectives. The subcontractor argument is usually a legitimate point that must be carefully considered. The team should be familiar enough with the subcontractors issues to know which are strong and which are not. In the cases studied, negotiations were not held directly with the subcontractors, since it was felt they would have wanted to discuss specifics, and that was contrary to the Government's strategy. Instead, the contractor would consult with them by phone. In order to achieve the settlement, compromising on some of the subcontractor demands may be needed. In most cases, the contractor has not closed his contract with the subcontractor, and is retaining a large amount of money. The subcontractor is probably anxious to settle with the prime contractor and get his money. In several cases, the contractor requested that the specific settlement numbers

for each issue not be included in the agreement, so negotiations with the subcontractors would not be compromised. The Government team should remember all of this when considering the "subcontractor" excuse.

Paragraph 8.6.2 - Indignation

A tactic that was observed in many of the cases reviewed was indignation. When the Government offered a new position or counter offer, the contractor acted offended. The manner in which the offer was received was one of disbelief and disgust. In one case, the contractor stated that "he didn't even know why he bothered to show up." The team should recognize this as a ploy. If the contractor did not want to settle, he would not have come. A good response is to clearly state that the contractor has not shown enough information to justify a higher position. The contractor should be encouraged to "give you" some justification.

Paragraph 8.6.3 - Outbursts

As the discussions continue, the emotions of the parties will most definitely increase. At some point in time, the contractor will probably "lose his cool" and some type of outburst will occur. The outburst could include profanity and may last for a short while. The Government team must control their tempers in this situation, or the negotiations will become nothing more then a shouting match. The contractors outburst may be genuine, but it should not

be allowed to totally disrupt the discussions. If needed, a short recess may be necessary to allow everyone to cool off.

Paragraph 8.7 - Government Tactics

The Government can also employ tactics to convince the contractor to agree to an issue. In one case, the Government had made several counter offers, while the contractor's position remained about the same. The chief negotiator used his own outburst on the contractor, accusing him of not negotiating in good faith. The contractor seemed affected my this, and some movement followed. All tactics that are used should support the attainment of the objective as outlined in the negotiation strategy. The outburst noted above was discussed by the team during a break, and was used quite effectively. All negotiators have their own favorite tactics, which may be appropriate as the situation progresses. A move that can dramatically affect the progress of negotiations, is payment of the settlement. In two of the cases studied, the Government offered to pay the contractor two days after signing and conforming the contract modification, if he accepted the settlement offer. This payment tactic had the intended effect, the contractor agreed in both cases. If necessary, this tactic should only be used late in the discussions when a settlement appears possible. Generally, final payments take at least 45 days to process and the time value of money can be a strong incentive. Current Navy (NAVCOMPT) policy should be reviewed before making this offer, but manual payments can

be authorized in certain circumstances, like contract settlements.

Paragraph 8.8 - Breaking Off Negotiations

Unfortunately it is not always possible to reach agreement in the two or three days allotted for the negotiations. The Government should not make a desperation deal at the last minute. If progress is being made, the negotiations may be continued for a day. If an agreement has not been reached by that time, it is probably best to suspend the negotiations. If there is still a possibility that an agreement could be reached, the "door should be left open" for possible future talks. These talks could be in person or on the phone, the method can be decided between the parties. As long as the contractor does not walk out, the negotiators should not feel discouraged if the parties have not reached agreement. In a large majority of the cases reviewed, a settlement was not reached after the initial negotiation session. It took an additional two months of talking on one contract to reach an agreement, and in an exceptional case, five additional months were needed to reach a settlement. The Government team should be careful not to allow the discussion period to go on too long. A reasonable period must be determined by the team, after which the Government should proceed with its original course of action. Again, each contract is different and it is impossible to set an absolute time. On the other hand, if the contractor reinstates his appeals and claims, it is

quite obvious that the negotiations have failed and the Government should proceed accordingly.

Paragraph 8.9 - Must Everything Be Settled

Earlier in this report, it was recommended that all outstanding issues be included in the negotiations. There comes a point when negotiations have reached a dead-end and no further movement appears possible. At that time the negotiation team may consider removing a troublesome issue from the agenda in hopes of reaching a settlement. This strategy was successfully used in two of the contracts studied. In both cases, a stubborn subcontractor refused to move on an issue and the entire settlement was in jeopardy. After these issues were excluded from the settlement, the contractor and the Government were able to agree on a settlement amount. The outstanding issues were allowed to proceed as claims and are still being litigated.

CHAPTER 9

THE SETTLEMENT

Paragraph 9.1 - Ensure Adequate Funding

When the Contractor and the Government have reached a settlement amount, the first thing that the team must check on is the availability of funds. In many cases, a considerable period of time has passed from when the original funds reservation was made. If the end of a fiscal year is near, money may have been obligated to other accounts. For that reason, it is critical that the funding be checked and verified. It would be very embarrassing for the Government to have to rescind an offer because insufficient funds were available.

Paragraph 9.2 - Post Negotiation Business Clearance

If a pre-negotiation business clearance was required, a post negotiation business clearance will also be needed. If a business clearance is not needed, a post negotiation memorandum is required. In either case, the negotiations are not completed until the paperwork is complete and the negotiation has been approved by the appropriate contracting officer. Any differences between the negotiation objective and the settlement amount must be thoroughly explained in the narrative sections. Assumptions, information, data, or discussions that were used to justify a new position should be included. If additional risk was assigned to an item as the result of discussions with counsel, that should be included too. Enough information should be included to show

the contracting officer that the price adjustments are fair and reasonable. Every effort should be made to expedite the preparation and approval of the post-negotiation business clearance. If needed, the document should be "hand carried" through the approval chain.

Paragraph 9.3 - Final Contract Modification Wording

Once the negotiations have been approved, the contract modification that will wrap everything up must be prepared. The wording and contents of the modification are very important and must be checked very carefully be those involved. Many of the contractors request that no issue specific dollar amounts be included in the modification wording, only the bottom line figure. This allows them some flexibility in dealing with their subcontractors. The following wording was used on several of the contracts studied to list the issues included in the settlement.

> In accordance with negotiations conducted during 13 through 29 March 19XX, and in compromise of the Contractor's claims and any other events or occurrences to this date, the Contractor and the Government agree that for the amount of $X,XXX.00 and XX calendar day time extension, all claims and issues between the Contractor and the Government pertinent to this contract are settled as follows:

CONTRACTOR FILE NO.	DESCRIPTION
4	Unsuitable Material
etc.	etc.

If appeals are included in the settlement, the following paragraph must be included in the modification.

The contractor agrees to dismiss with prejudice the following appeals pending before the Armed Services Board of Contract Appeals (ASBCA):

ASBCA DOCKET NO.	DESCRIPTION
31624	TEMPORARY POWER
etc.	etc.

Since this is a global settlement of the contract, the OICC TRIDENT counsel included the following paragraph in the modification.

> The settlement amount also includes but is not limited to: all claims for interest that may have accrued on any and all of the aforesaid claims and appeals; and any other outstanding issues. This settlement also includes any and all other Contractor claims and issues, past and present, which may or may not be within the specific ambit of this comprehensive settlement including and as yet unasserted claims or issues that would be based upon events or conditions existing prior to the March 19XX negotiations. The parties also agree that nothing in the contents of this modification constitutes an admission by either party as to the validity of the claim and appeals compromised hereby, it being the intent of the parties to settle and compromise all disputed claims, appeals and issues without acknowledgement or admission, by either party, of the validity of such claims, appeals, or issues. Each element of this modification is a part of the overall compromise of these disputed claims, appeals, and issues and cannot be considered by itself as a determination that the release thereby accorded is justified on its merits alone.

While this appears to be wordy, counsel has required that it be included. This can be used as a guide in preparing other similar modifications. The exact wording should be verified with the appropriate counsel. If any issues were excluded from the settlement, they should be clearly listed in a separate paragraph. If time is of the essence, the modification may be express mailed to the contractor. Correct invoice and release forms should also be included in

the packet. As with other modifications, the contractor must accept the modification without qualification.

Paragraph 9.4 - Final Payment and Contractor's Release

The culmination of this global negotiation process, is the receipt of the contractor's final release and processing of the final payment. Although the release document is very simple, it must be checked extremely carefully. Dates, signatures, written figures and numbers should match and agree with the settlement. A mistake on the release has the potential to cause a lot of trouble. In one case, the final release was redone three times before it was accepted by the Government. Attention to detail at this time could avoid embarrassment later. Once the final release is correct, the final invoice can be processed and paid.

CHAPTER 10

CONCLUSION

Paragraph 10.1 - Alternate Disputes Resolution

In addition to the global settlement technique, the Department of Defense has investigated alternate disputes resolution (ADR) procedures to reduce the number of claims in litigation. Within the last 2 years, a significant push has been made to use ADR. Current Navy policy requires that for all appeals under $25,000, the Navy lawyer must advise the contractor of the ADR process (1). If the contractor wishes to use ADR, the Navy may not object. The U.S. Claims Court has issued a policy statement supporting ADR. ADR methods include: 1) "High-level" negotiations between the contractor and the Government with a facilitator (this is similar to arbitration, but is not true arbitration since the Comptroller General will not allow the Government to arbitrate (2)); 2) and informal hearing between the parties and the judge without a court reporter or sworn testimony (an advisory or bench ruling can be make at the conclusion); 3) a more formal, "fast-track" hearing with each side having a limited time to present its case (a bench ruling is made that same day and there is no appeal). The ADR concept is still evolving, but it can be almost any process the parties agree to that will resolve the dispute.

Paragraph 10.2 - Another Point of View

The global settlement negotiation idea is not unique to the Navy. The Corps of Engineers has been in the forefront

of developing global settlement procedures for the past five years. In contrast to the Navy, most of the global negotiations are conducted at the division level and the division engineer is usually involved as the leader of the Government team (3). The ground rules are similar to those presented in this report. However, the actual agenda is more formal and structured to encourage a dialogue after the initial presentations in hopes of forcing a decision. The Army procedure may include a 30 to 90 day limited "discovery" period prior to negotiations. This allows each side to better understand the strengths and weaknesses of the other side. Knowing this information ahead of time may encourage the parties to settle early. The Army has also successfully used a facilitator in negotiations. The facilitator is a respected law professor or retired judge who sits in on the presentations and discussions. The facilitator will give his views to each side, relative to their positions. However, the facilitator is not a "go-between" or mediator, and does not carry positions back and forth (4). This procedure was used to settle several of the Corps of Engineers Saudia contracts.

Paragraph 10.3 - Conclusion

The global settlement procedure is certainly the least complex option available for resolving a disputed contract. The Government contract administrator should be aware of the alternates to litigation and should make the attempt to avoid going to court. Once the disputes are settled and the final invoice is paid, the negotiation team can look back

with great pride on their accomplishment and hopefully use some of the knowledge and experience in their everyday dealings with the contractors.

APPENDIX A

SAMPLE LETTERS INVITING NEGOTIATION

DEPARTMENT OF THE NAVY

OFFICER IN CHARGE OF CONSTRUCTION
NAVAL FACILITIES ENGINEERING COMMAND CONTRACTS, TRIDENT
293 POINT PETER ROAD
SAINT MARYS, GEORGIA 31558

024
N68248-82-C-2021
Ser 02/22474
August 9, 1988

Santa Fe Engineers, Inc.
45100 North Yucca Avenue
Lancaster, California 93534

Subj: CONTRACT N68248-82-C-2021, INERT COMPONENTS CONTROL BUILDING, MISSILE PARTS WAREHOUSE, NAVAL SUBMARINE BASE, KINGS BAY, GEORGIA; CLOSE OUT NEGOTIATIONS

Gentlemen:

This letter is in response to your recent conversation with Mr. Buonaccorsi at Headquarters, Naval Facilities Engineering Command. It is my understanding that you desire to discuss possible settlement of all outstanding issues on the subject contract in conjunction with negotiating the final contract close out.

The Navy is willing to enter into settlement discussions of all outstanding issues for the purpose of closing out the subject contract. To that end, you should submit a letter to the Contracting Officer, proposing that such talks be commenced for the purpose of closing out the contract. Your letter should request that all proceedings on pending litigation be held in abeyance pending further discussion and state whether you will agree there shall be no accrual of interest on your claims against the subject contract. All issues will be included in any resulting negotiations and final settlement, such as outstanding claims, unresolved Proposed Changes (hereinafter "P/C"), and potential Government counterclaims for nonconforming work or damages. A list of all known outstanding issues which have been quantified is provided in enclosure (1). In addition, the Government plans to submit a counter claim for crane rail installation deficiencies as soon as the corrective action can be quantified.

In the event you are in total agreement with the list of outstanding issues, your letter to the Contracting Officer should state that there is no duplication or overlap between the issues you have raised and that you have no further claims on the subject contract. Should this statement not currently reflect your position, please submit your revised claim(s) and/or additional claim(s) and identify by number, subject, and amount any additional P/C's or other issues with your letter to the Contracting Officer.

Upon receipt of your request, a mutually agreeable date will be scheduled for negotiations. We will confer with you regarding the format for this meeting, to be agreed upon ahead of time, so that we may begin settlement discussions.

Upon reaching agreement and receipt of an acceptable final release, the Government will effect prompt final payment of all sums due under the contract. We look forward to hearing from you in the near future.

Sincerely,

Encl:
(1) Outstanding Issues on Contract N68248-82-C-2021

OUTSTANDING ISSUES

SANTA FE ENGINEERS
CONTRACT N68248-82-C-2021, ICCB/MPW

A. Santa Fe Issues

	SFE NO.	SUBJECT	$ AMOUNT	DAYS TIME	PC NO.	MOD NO.	CONTRACTING OFFICERS FINAL DECISION NO.	DATE	ASBCA DOCKET NO.
1.	4	Unsuitable mat'l/dewatering	288,632	57	2				
2.	12	Revise construction limits	355,647	56	6				
3.	38	Column moment connection	67,174	21	19				
4.	56	Road thickness	7,629	0	25	P00039			
5.	58	Install add'l roof drains	3,088	0	30	P00040			
6.	81	Waterline encasement	4,131	0	37	P00041			
7.	88	Unsuitable mat'l, Polaris Rd	2,195	0	40	P00042			
8.	65,70,95	Wall girts @ vert lift door	7,496	0	41	P00043			
9.	2	Earth forms for footers	(2,000)	0	63				
10.	10	ICCB masonry walls	123,046	38					
11.	12	Dispose of excess soil	371,729	21					
12.	15	Acceleration	3,897,887	0					
13.	34	Floor piping in MPW	1,095	0					
14.	59	MPW field painting	973,059	100			87-36	6/18/87	34566
15.	61	Duct offsets	17,046	0					
16.	77	Road crossings/ductbank	99,134	8			87-09	6/11/87	35275
17.	78,110,121	Thermal manhole	393,575	85					
18.	79	Unsuitable soil MPW Pkg lot	110,750	30					
19.	93	Insulated metal wall panels	462,322	0					
20.	104	Ground girdle	149,382	30					
21.	105	Motorized dampers	277,348	75					
22.	109	Gov't equipment for FET's	48,663	0					
23.	111	Differential pressure switch	2,152	0					
24.	118	Tie-in irrigation	1,087	0					
25.	129	Opposed Blake Dampers	(3,967)	0					
26.	137A	Non-warranty work	542	0					
27.	140	Crane envelope Insulation	1,701	0					
28.	141	Relocate motorized Dampers	13,135	0					
29.	142	Interest on M.W.P. retention	7,091	0					
30.	?	Temporary Power ltr dtd 3/28/85	10,000	0			85-02	5/14/85	31624

B. Government Issues

	SUBJECT	AMOUNT
1.	HVAC Deficiencies	148,479
2.	Repairs to Grounding Girdle	96,267
3.	Utility Charges	348,165
4.	Acutal Damages due to Late Completion	6,469,926

Enclosure (1)

R.O.I.C.C.
KINGS BAY
GA.

ROKB

DEPARTMENT OF THE NAVY

OFFICER IN CHARGE OF CONSTRUCTION
NAVAL FACILITIES ENGINEERING COMMAND CONTRACTS, TRIDENT
293 POINT PETER ROAD
SAINT MARYS, GEORGIA 31558

15 DEC 88

024
N68248-82-C-2019
N68248-82-C-2020
N68248-83-C-3217
N68248-86-C-6049
Ser 02/23371
December 15, 1988

Caddell Construction Company, Inc.
P. O. Box 210099
Montgomery, Alabama 36121

Subj: CONTRACT N68248-82-C-2019, MAINTENANCE SUPPORT BUILDING, EQUIPMENT MAINTENANCE BUILDING; CONTRACT N68248-82-C-2020, VERTICAL MISSILE PACKAGING BUILDING NO. 1; CONTRACT N68248-83-C-3217, VERTICAL MISSILE PACKAGING BUILDING #2; CONTRACT N68248-86-C-6049, CCS SHOPS/REFIT WAREHOUSE, NAVAL SUBMARINE BASE, KINGS BAY, GEORGIA; CLOSE OUT NEGOTIATIONS

Gentlemen:

This letter is in response to a recent letter from your Attorney to our Counsel. It is my understanding that you desire to discuss possible settlement of all outstanding issues on the subject contracts in conjunction with negotiating the final contract close outs.

The Navy is willing to enter into settlement discussions of all outstanding issues for the purpose of closing out the subject contracts. To that end, you should submit a letter to the Contracting Officer, proposing such talks be commenced for the purpose of closing out the contracts. Your letter should request that all proceedings on pending litigation be held in abeyance pending the further discussion and state whether you will agree there shall be no accrual of interest on your claims against the subject contracts. All issues will be included in any resulting negotiations and final settlement, such as outstanding claims, unresolved Proposed Changes (hereinafter "P/C"), and potential Government counterclaims for nonconforming work or damages. A list of all known outstanding issues which have been quantified is provided in enclosure (1).

In the event you are in total agreement with the list of outstanding issues, your letter to the Contracting Officer should state that there is no duplication or overlap between the issues you have raised and that you have no further claims on the subject contracts. Should this statement not currently reflect your position, please submit your revised claim(s) and/or additional claim(s) and identify by number, subject, and amount any additional P/C's or other issues with your letter to the Contracting Officer. In this regard, we understand there should be a significant revision to the total amount of time and money sought due to overlapping requests for time extensions. If so, your response should reflect this by eliminating any duplication in time and time related costs now existing within the claims. A consolidated time and cost analysis, separating direct costs from time related costs, would be very helpful in preparing for negotiations.

Upon receipt of your request, a mutually agreeable date will be scheduled for negotiations. We will confer with you regarding the format for this meeting, to be agreed upon ahead of time, so that we may begin settlement discussions.

Upon reaching agreement and receipt of an acceptable final release, the Government will effect prompt final payment of all sums due under the contracts. We look forward to hearing from you in the near future.

Sincerely,

Encl:
(1) Outstanding Issues on Contracts N68248-82-C-2019, N68248-82-C-2020, N68248-83-C-3217, and N68248-86-C-6049

0632P

bcc:
09
09A
09C
02
05
ROKB
024

OUTSTANDING ISSUES

CADDELL CONSTRUCTION COMPANY

SUBJECT	AMOUNT $	TIME DAYS	ASBCA NO
I. Contract N68248-82-C-2019			
A. Caddell Issues			
1. Water System cqc SSP	31,000	0	32640
2. MH#3 Stub Out	25,000	0	32641
3. HEMP Pit Manlift	216,374	30	34273
4. HEMP Pit, Deff. Site Cond	4,071,334	265	34698
5. Painting of Ceiling Surfaces	317,506	45	34700
6. Duct Insulation Conflict	93,482	14	34699
7. Starters on Air Hndlg Equip.	85,803	14	34938
8. BTU Meters	3,682	0	37728
9. Paint Spray Booth/Duct Access	2,645	0	[illegible]
10. Clerestory Windows	57,338	10	36548
11. Vertical Lift Door Conflicts	58,521	7	36548
12. Structural Steel	125,415	8	36[illegible]
13. Remission of LD's	72,000	80	[illegible]
	5,160,100	473	
B. Government Issues - None			
II. Contract N68248-82-C-2020			
A. Caddell Issues - None			
B. Government Issues			
1. Backcharge for Soil Stabilization	379,897	0	
III. Contract N68248-83-3217			
A. Caddell Issues			
1. Removal of Pit Base Slab	407,116	98	34750
2. Acceleration	615,099	0	
3. U&P Delay	80,143	0	
4. Soil Density	21,500	0	
	1,123,858	98	
B. Government Issues - None			
IV. Contract N68248-86-C-6049			
A. Caddell Issues			
1. Mechanical Roof Curb Supports	122,378	21	363690
2. Warehouse Mach Equipment Supports	54,459	6	363690
3. Epoxy Joint Sealant	97,891	28	
	274,728	55	
B. Government Issues - None			

APPENDIX B

SAMPLE LETTERS FOR RULES AND AGENDA

III

DEPARTMENT OF THE NAVY

OFFICER IN CHARGE OF CONSTRUCTION
NAVAL FACILITIES ENGINEERING COMMAND CONTRACTS, TRIDENT
293 POINT PETER ROAD
SAINT MARYS, GEORGIA 31558-0768

09A
N68248-82-C-2021
Ser 02/23651
February 2, 1989

Santa Fe Engineers, Inc.
45100 North Yucca Avenue
Lancaster, California 93534

Attn: Ms. Irma Story, Vice President

Subj: CONTRACT N68248-82-C-2021, INERT COMPONENTS CONTROL BUILDING, MISSILE PARTS WAREHOUSE, NAVAL SUBMARINE BASE, KINGS BAY, GEORGIA; CLOSE OUT NEGOTIATIONS

Dear Ms. Story:

I have been appointed the Contracting Officer for the close out negotiations, and I thank you for your letter Serial No. 480-768 of 28 December 1988. I am currently reviewing all of the issues and feel confident we will be able to reach a satisfactory agreement. Unfortunately, the magnitude of the issues involved and the pressing schedules of key personnel have caused us to be a little behind our original schedule, which called for negotiations in February. Allowing for completion and approval of the required business clearance, we will be ready to commence discussions the week beginning 13 March 1989, or as soon thereafter as is convenient to you.
My initial assessment is that two days will be sufficient.

I have arranged for a suitable conference room here at the Officer in Charge of Construction, TRIDENT, 293 Point Peter Road, Saint Marys, Georgia. I will also make a private caucus area available to your negotiating team. In the interest of fostering efficient and productive discussions, we suggest using a specific format and agenda. Enclosed for your consideration is a tentative agenda as well as a suggested set of ground rules to be observed during our discussions. Similar agenda and groundrules have proven effective in the past. You will also find enclosed the list of Navy representatives who will participate in the settlement discussions with you.

Please note that the list of Navy representatives does not include an attorney from our legal staff. Since our discussions will focus on technical and cost issues as they relate to the construction work, we believe that a more productive session will result if we limit the attendance to engineering, construction, and contracts personnel. We recognize, of course, that if a legal question were to arise during our discussions, you may wish to consult with your attorney. We would be pleased to provide suitable office space on site for your attorney for those days, or alternatively, to provide convenient and private telephone access if that may be preferable.

I look forward to hearing from you on these proposals. Please do not hesitate to contact me directly at (912) 673-2320.

Sincerely,

Enclosures

PROPOSED AGENDA
SETTLEMENT DISCUSSIONS
CONTRACT N68248-C-82-2021, ICCB/MPW
NAVAL SUBMARINE BASE, KINGS BAY, GEORGIA

Date: Week of 13-17 March 1989

Location: Conference Room C, OICC TRIDENT, 293 Point Peter Road, Saint Marys, GA

Date	Time	Subject
1st Day	0900-1000	Santa Fe Opening Presentation
	1000-1030	Break
	1030-1130	Government Opening Presentation
	1130-1300	Lunch
	1300-1700	Commence Settlement Discussions
2nd Day	0900-1500	Continue Settlement Discussions
	1600-1700	Wrap Up

NAVY REPRESENTATIVES

Title	Name
Head, Acquisition Department	CDR Robert Degon, CEC, USN, PE
Acquisition Coordination Officer	LCDR Bill Olson, CEC, USN, PE
Assistant ROICC	LT Chuck Fanshaw, CEC, USN, EIT
Contract Administrator	Mr. Andy Byrd
Contract Specialist	Ms. Samantha Somborn

GROUNDRULES
SETTLEMENT DISCUSSIONS
CONTRACT N68248-82-C-2021, ICCB/MPW
NAVAL SUBMARINE BASE, KINGS BAY, GEORGIA

1. The representatives will have the authority to settle the issues, but they may consult with others not in the meeting before making a final agreement.

2. Attorneys may be present at the meeting if both sides concur. Otherwise, we can provide office space for the Contractor's attorney or private telephone access to the attorney.

3. The rules of evidence normally used in a hearing would not apply.

4. Questions may be asked to better understand the other side's statements.

5. The parties should be prepared to back up statements with documentation if requested..

6. No recordings will be made of the discussions. However, notes may be taken provided they are destroyed within 10 days after the settlement efforts have ended.

7. Any offer or statement made as part of the settlement duscussion can not be used for any other purpose in any other proceeding.

8. Any document prepared for exclusive use in the discussion can not be used by the other party for any other purpose in any other proceeding.

AROKB
(LCDR Biggins)

DEPARTMENT OF THE NAVY

OFFICER IN CHARGE OF CONSTRUCTION
NAVAL FACILITIES ENGINEERING COMMAND CONTRACTS, TRIDENT
293 POINT PETER ROAD
SAINT MARYS, GEORGIA 31558-0768

024
N68248-82-C-2019
N68248-82-C-2020
N68248-83-C-3217
N68248-86-C-6049
Ser 02/23371
February 24, 1989

Caddell Construction Company, Inc.
P. O. Box 210099
Montgomery, Alabama 36121

Attn: Walter G. Nanney, Vice President

Subj: CONTRACT N68248-82-C-2019, MAINTENANCE SUPPORT BUILDING, EQUIPMENT MAINTENANCE BUILDING; CONTRACT N68248-82-C-2020, VERTICAL MISSILE PACKAGING BUILDING NO. 1; CONTRACT N68248-83-C-3217, VERTICAL MISSILE PACKAGING BUILDING #2; CONTRACT N68248-86-C-6049, CCS SHOPS/REFIT WAREHOUSE, NAVAL SUBMARINE BASE, KINGS BAY, GEORGIA; SETTLEMENT DISCUSSIONS

Dear Mr. Nanney,

Thank you for your letter of December 30, 1988 regarding settlement discussions for the subject contracts. In the interest of fostering efficient and productive discussions, the following proposals regarding the format, agenda, and attendees are provided.

The Navy proposes that discussions be scheduled for March 28-30, 1989, as this is the earliest time which will allow completion of required business clearances and which is also compatible with your schedule and the schedules of key Navy personnel. We suggest that discussions be held in a private conference room of the Officer In Charge of Construction, TRIDENT at 293 Point Peter Road, Saint Marys, Georgia. Enclosed for your consideration is a tentative agenda as well as a suggested set of groundrules to be observed during our discussions. You will also find enclosed the list of Navy representatives who will participate in the settlement discussions with you. A revised list of issues is also enclosed.

I look forward to hearing from you on these proposals. Please do not hesitate to call contact me directly at (912) 673-2301.

Sincerely,

PROPOSED AGENDA
SETTLEMENT DISCUSSIONS
CADDELL CONSTRUCTION COMPANY
NAVAL SUBMARINE BASE, KINGS BAY, GEORGIA

Date: 28 - 30 March 1989

Location: Conference Room C, OICC TRIDENT, 293 Point Peter Road, Saint Marys, Georgia

Date	Time	Subject
1st Day	0900-1000	Caddell Opening Presentation, All Contracts
	1000-1030	Break
	1030-1130	Government Opening Presentation, All Contracts
	1130-1300	Lunch
	1300-1700	Commence Settlement Discussions
2nd Day	0900-1700	Continue Settlement Discussions
3rd Day	0900-1500	Continue Settlement Discussions
	1600-1700	Wrap Up

NAVY REPRESENTATIVES

Senior Member	CAPT Ken Fusch, CEC, USN, P.E. Deputy Officer in Charge of Construction, TRIDENT
Alternate Senior Member	CDR Ron Kechter, CEC, USN, P.E. Resident Officer in Charge of Construction, Kings Bay
Member	LCDR Tim Biggins, CEC, USN, P.E. Assistant Resident Officer in Charge of Construction, Kings Bay
Member	Mr. Lee Pirkle, JD Contract Administrator
Member	Mr. Jay Schnierle Contract Administrator
Counsel	Mr. David Rowland, Esquire

LIST OF ISSUES
SETTLEMENT DISCUSSIONS
CADDELL CONSTRUCTION COMPANY
NAVAL SUBMARINE BASE, KINGS BAY, GEORGIA

Date: 28 - 30 March 1989

Location: Conference Room C, OICC TRIDENT, 293 Point Peter Road, Saint Mary's, Georgia

A. 82-2019

1. Water System CQC SSP
2. MH #3 Stub Out
3. HEMF Pit Manlift
4. HEMF Pit Differing Site Conditions
5. Painting of Ceiling Surfaces
6. Duct Insulation Conflict
7. Starters on Air Handling Equipment
8. BTU Meters
9. Paint Spray Booth/Duct Access
10. Clerestory Windows
11. Vertical Lift Door Conflicts
12. Structural Steel
13. Remission of LD's Phase III
14. Acceleration
15. HEMF Pit Ductwork
16. Remission of LD's Phase I

B. 83-3217

1. Removal of Pit Base Slabs
2. Acceleration
3. U & P Delay
4. Soil Density

C. 86-6049

1. Mechanical Roof Curb Supports
2. Warehouse Mechanical Equipment Supports
3. Epoxy Joint Sealer

D. 82-2020

1. Backcharge - Soil Stabilization

GROUNDRULES
SETTLEMENT DISCUSSIONS
CADDELL CONSTRUCTION COMPANY
NAVAL SUBMARINE BASE, KINGS BAY, GEORGIA

1. The principal representatives will have the authority to settle the issues, but they may consult with others not in the meeting before making a final agreement.

2. Attorneys will be present at the meeting to provide guidance to the principal representatives.

3. The rules of evidence normally used in a hearing would not apply.

4. Questions may be asked to better understand the other side's statements.

5. The parties should be prepared to back up statements with documentation if requested.

6. No recordings will be made of the discussions. However, notes may be taken provided they are destroyed within 10 days after the settlement efforts have ended.

7. Any offer or statement made as part of the settlement discussion can not be used for any other purpose in any other proceeding.

8. Any document prepared for exclusive use in the discussion can not be used by the other party for any other purpose in any other proceeding.

APPENDIX C

SAMPLE ISSUE SUMMARY SHEETS

ISSUE A.20: GROUND GIRDLE

Santa Fe Position: The contract does not require the contractor to give the Navy a ten day written notice prior to burial of the grounding system, because this step is a prerequisite to a test, not the test itself. Also, the contractor contends it is not practical to keep the whole grounding system open for ten days waiting for the Navy to inspect. Therefore, the ROICC had no basis to withhold payment for the grounding girdle. The FET grounding tests were performed in the presence of ROICC and Lockheed personnel, but they would not sign-off on these tests until further analysis of the readings could be made. Subsequently, the ROICC directed the contractor to reexcavate the grounding system surrounding the ICCB and the MPW. Since there were no deficiencies in the grounding girdle the Government is liable for the cost and time of $149,382.03 and 30 days to accomplish this rework.

ROICC Position: The contract does require a 10 day written notice prior to tests, verification, etc. Since Specification Section 01402, paragraph 4.4, states "verify grounding girdle is bonded and continuous," the ROICC was correct in issuing the CCCN on this issue. The ROICC must have thought there was something wrong with the grounding girdle because they did not accept the grounding tests that were performed. ROICC then directed the contractor to reexcavate the grounding system for a visual inspection. As a result of the visual inspection, which should have been performed earlier if the contractor had given proper notice, deficiencies were found in the grounding girdle. Since there were deficiencies, the contractor is responsible for all costs associated with correcting the deficiencies. Therefore, no cost or time is merited.

Analysis: The ROICC position is correct. It seems the ROICC could have handled the situation better, by requiring the contractor to reexcavate earlier or by pointing out the deficiencies before they were buried. It is true the contractor did not give a ten day notice, but surely Sverdrup personnel or the Con Rep were on the site frequently enough to know the contractor was working with the grounding system. Considering the ROICC finally directed the contractor to reexcavate, there probably was some knowledge of deficiencies in the system when the first CCCN was issued. This is a case where the ROICC is correct but through better handling of the issue they could have saved a lot of rework.

It should be noted that the contractor on 14 August 1986 informed the ROICC that there was a conflict between drawings EP-10 and EP-7 in how the down conductors were to be tied to ground. The contractor stated that they would connect the down conductors to the ground girdle unless informed otherwise. The files do not have any ROICC reply to this issue. Yet when the reexcavation showed that the down conductor was connected this way, the contractor was required to connect the down conductor to a ground rod.

Issue: Entitlement, time and extended overhead

Initial Position: The initial position supports the ROICC position. The contractor merits no time or costs.

Negotiation Objective: The negotiation objective remains the same as the initial position. However, Counsel has suggested that a litigative risk of 17% should be assigned. At 17% risk, the objective would be $25,395 (17% x 149,382) and 5 (17% x 30) calendar days time extension.

CONTRACT N68248-86-C-6049

ISSUE B.2: WAREHOUSE MECHANICAL ROOF CURB SUPPORTS

Contractor's Position: The provision of wooden blocking and structural steel supports beneath the mechanical roof curbs, as done per ROICC clarification, is not a contract requirement and a subsequent contract modification is justified.

ROICC's Position: The provision of wooden blocking and structural steel supports beneath the mechanical equipment roof curbs, per our interpretation, is a contract requirement.

Analysis: The contractor asserted that only exhaust fans and intake hoods are covered by Detail 4/A-4/A-4. However, the note on the detail states MECHANICAL EQUIPMENT, EXHAUST FAN OR AIR INTAKE HOOD, which is very clear that it applies to mechanical equipment. The ROICC and 09C have had several extensive meetings and considerable correspondence with the contractor and his subcontractor in an effort to resolve this dispute. We feel very strongly that the plans and specifications clearly require the wood blocking and structural steel in dispute. The contractor also had the benefit of having the same problem two months earlier on the CCS Shop (Phase I) of this contract, but still installed the curbs incorrectly. Although the steel subcontractor has been asked numerous times by the contractor and the Government, he is yet to provide a breakdown of the tons of steel in his claim to specific steel member quantities. The contractor has already agreed, in previous discussions, to eliminate his impact costs.

Issue: Labor and materials for installation of additional wood blocking and structural steel and impact costs.

Initial Position: The contractor is due no cost or time.

Negotiation Objective: The contractor is due labor and material costs to install 122 lineal feet of 2" x 4" wood blocking and 72 lineal feet of 3/8" x 5" steel plate not specifically required by the plans. This would result in a negotiation objective of $792.00.

ISSUE B.1: HVAC DISCREPANCIES

Santa Fe Position: The contractor's stated position is no cost and no time for completing the HVAC system or correcting discrepancies because the system was installed properly and the specifications were defective if there was a problem.

ROICC Position: The RIND postion is that the contractor is liable for the cost of contract N68248-87-C-7018, ICCB HVAC Modifications, for failing to correct punchlist items pursuant to a Clause 10(c) directive. RIND letter 1084 of 6 March 1987 directed Santa Fe to complete punchlist items prior to 27 March 1987 or the Government would correct them at Santa Fe's expense. Modifications to contract 87-7018 were required to correct non-conforming work discovered while performing other modifications on the system, and to successfully complete the facility evaluation test (FET). The cost to complete this work under contract 87-7018 was $111,895.

Analysis: The contractor was directed to complete the punchlist by 27 March 1987. As detailed in RIND letter 1106 of 17 April 1987, the contractor failed to start any work until 30 March 1987. By that time the 7018 contractor had mobilized on-site and was proceeding to correct deficiencies. RIND letter 1094 had extended the time to complete the punchlist to 10 April 1987. During an on-site meeting with Santa Fe representatives on 31 March 1987, the contractor was advised that the follow-on work had started and that if they wished to correct any items prior to 10 April, RIND would delete them from the follow-on work. The contractor declined. The contractor was issued a directive and failed to comply with it in a timely manner and is responsible for the cost of correcting punchlist items. A careful analysis of the scope of the contract reveals that several items are not punchlist items, but were added by the A/E to improve system performance. Also, it is doubtful whether all of the modifications can be charged to the contractor, especially the extra FET work required by Lockheed. The contractor is only responsible for completion of punchlist items and correction of non-conforming work. Therefore, the full cost of contract 87-7018 cannot be charged to Santa Fe.

Issue: Quantum

Initial Position: The initial position is $89,516.00. This figure represents 80% of the cost of contract N68248-87-C-7018 without including any modifications.

Negotiation Objective: The objective, without including a litigative risk factor, is $17,903.00 (20% of the initial position). However, if we apply a probability of recovery factor of 10% the objective is reduced to $8,952.00. This equates to a 90% risk factor.

APPENDIX D

SAMPLE RISK ASSESMENT

Estimate of Probability of Losing Appeal and Probable Quantum Liability

		Issue		Initial $ Amount	Days Claimed	Prob. of Loss	Prob. $ Liability	Prob. No. Days
A.	1	Unsuitable Mat'l/Dewatering	*	$378,466	57	0	$0	0
A.	2	Revise Construction Limits		$369,621	56	0.5	$184,811	28
A.	3	Column Moment Connection	*	$67,174	21	0	$0	0
A.	4	Road Thickness	*	$16,888	0	0	$0	0
A.	5	Install Add'l Roof Drains	*	$9,904	0	0	$0	0
A.	6	Waterline Encasement	*	$9,329	0	0	$0	0
A.	7	Unsuitable Mat's, Polaris Rd	*	$4,895	0	0	$0	0
A.	8	Wall Girts @ Vert Lift Door	*	$28,754	0	0	$0	0
A.	9	Earth Forms for Footers	*	($2,000)	0	0	$0	0
A.	10	ICCB Masonry Walls		$123,046	38	0.2	$24,609	8
A.	11	Dispose of Excess Soil		$374,652	21	0.25	$93,663	5
A.	12	Acceleration		$3,897,887	0	0	$0	0
A.	13	Floor Piping in MPW	*	$1,590	0	0	$0	0
A.	14	MPW Field Painting		$973,059	100	0.1	$97,306	10
A.	15	Duct Offsets		$17,046	0	0.1	$1,705	0
A.	16	Road Crossings/Ductbank		$99,134	8	0.1	$9,913	1
A.	17	Thermal Manhole		$337,510	70	0.23	$77,627	16
A.	18	Unsuitable Soil MPW Pkg Lot		$110,750	26	0.18	$19,935	5
A.	19	Insulated Metal Wall Panels		$462,322	0	0.4	$184,929	0
A.	20	Ground Girdle		$149,382	30	0.17	$25,395	5
A.	21	Motorized Dampers		$277,348	75	0.1	$27,735	8
A.	22	Gov't Equipment for FET's		$48,663	0	0.1	$4,866	0
A.	23	Differential Pressure Switch	*	$2,152	0	0	$0	0
A.	24	Tie-in Irrigation		$1,087	0	0.1	$109	0
A.	25	Opposed Blake Dampers	*	($3,967)	0	0	$0	0
A.	26	Non-Warranty Work	*	$542	0	0	$0	0
A.	27	Crane Envelop Insulation		$1,701	0	0.1	$170	0
A.	28	Relocate Motorized Dampers		$13,135	0	0.1	$1,314	0
A.	29	Interest on MPW Retention	**	$7,091	0	0	$0	0
A.	30	Temp Power Ltr dtd 3/25/85		$6,883	0	0.1	$688	0
A.	31	Structural Steel Design		$50,320	30	0.2	$10,064	6
A.	32	Weather Jan 86	*	$0	5	0	$0	0
A.	33	Cancel Mech Schooling 6 Times	*	$1,124	0	0	$0	0
A.	35	Interest on Metal Wall Panels	**	$3,316	0	0	$0	0
				$7,838,804	537		$764,838	91
B.	1	HVAC Deficiencies		$89,516		0.1	$8,952	
B.	2	Repairs to Grounding Girdle		$70,300		0.1	$7,030	
B.	3	Utility Charges		$317,519		0.28869	$91,665	
B.	4	Actual Damages, Late Completion		$378,560			$0	
				$855,895			$107,646	
		Total		$6,982,909	537	Total	$657,192	91

* Probability equates to Govt agreeing to contrator's direct cost with only overhead to neg.

** To be addressed in bottom line analysis

APPENDIX E

CALCULATION OF OTHER RISK COSTS

BLAKE 2018 LITIGATION COST ESTIMATE

A. Experts

Basic Expert:		Travel
Study	7 days	1,200
Discovery	2 days	800
Depositions	2 days	
Trial Prep	2 days	
Trial	2 days	800
	15 days	2,800

15 days X 8 hrs X $100/hr = 12,000
Misc help (Sec'y, Asst) = 3,000
Travel = 2,800
17,800 per unit of basic expert

	Soils	Architectural	Mechanical	
A2		1		
A5	1			
A6	1			
A9			1	
A16		1		
A17		1		
B1			1	
	2	3	2	= 7 Total

7 Units @ $17,800 = $124,600
A4, A14 CPM Analysis = $150,000
Minor Issues = $25,000
Total Experts = $299,600

B. Discovery 2 @ 5000 = $10,000

C. Depositions 10 @ 500 = $5,000

D. A/E Support

Principal 200 hrs @ $90 = $18,000
Engineers 400 hrs @ $60 = $24,000
Travel, Supplies = $8,000
$50,000

E. Personnel

Attorney	2000 hrs @ $25	=	$50,000
Tech Support	1000 hrs @ $25	=	$25,000
Clerical	1000 hrs @ $12	=	$12,000
			$87,000

F. Travel

Attorney	10 trips X $500	=	$5,000
Other	5 trips X $500	=	$5,000
			$10,000

G. Trial

Per Diem 6 people X $50 X 14 days	$4,200
Air 6 X $500 X 2 trips	6,000
Misc 6 X 50	300
Hotel 14 days X $75 X 8 rooms	8,400
Hotel Misc, copying, telephone	500
	$19,400

RECAP

Experts	$299,600
Discovery	10,000
Depositions	5,000
A/E Support	50,000
Personnel	87,000
Travel	10,000
Trial	19,400
	$481,000

lds
10/23/89

SANTA FE CLAIMS

18 claims over $10,000 needing COFD
15 claims under $10,000 needing COCD
33 Total

Hours per claim writeup:

024X	80 Hrs
024	8 hrs
02	4 hrs
	92 hrs
09CX	24 hrs

Code 02: 33 claims x 92 hrs = 3036 hrs x $25/hr = 75,900
= 76 mwks
= 1.5 myrs

Code 09C: 33 claims x 24 hrs = 792 hrs x $25/hr = 19,800
= 20 mwks
= 0.4 myrs

Total $95,700

SANTA FE LITIGATION COST ESTIMATE

A. Experts

Basic expert:		Travel
Study	7 days	1,200
Discovery	2 days	800
Depositions	2 days	
Trial Prep	2 days	
Trial	2 days	800
	15 days	2,800

15 days x 8 hrs x $100/hr	=	12,000
Misc help (Sec'y, Asst)	=	3,000
Travel	=	2,800
		17,800 per unit of basic expert

One unit of basic expert for each issue over $100,000:

	Soils	Architectural	Mechanical	Electrical	
A1	1				
A2	1				
A10		1			
A11	1				
A14		1			
A17			1		
A18	1				
A19		1			
A20				1	
A21			1		
	4	3	2	1	= 10 total

10 units @ $17,800	=	$178,000
A12 CPM Analysis	=	$150,000
Minor Issues	=	$50,000
Total Experts	=	$378,000

B. Personnel

2 Attorneys, 1 year,	4000 hours @ $25/hr	=	$100,000
1 Tech Support, 1 yr;	2000 hours @ $25/hr	=	50,000
1 Clerical;	2000 hours @ $12/hr	=	24,000
			$174,000

POTENTIAL SANTA FE INTEREST
3/1/89

				Time Period and Interest Rate										
				1-6,85	7-12,85	1-6,86	7-12,86	1-6,87	7-12,87	1-6,88	7/88-6/90		Risk	Total
				0.12125	0.10375	0.0975	0.085	0.07625	0.08875	0.09375	0.0925	Subtotal	Factor	Interest
A. Santa Fe Issues	Clm No.	SFE Amount	Claim Date											
10 ICCB Masonry Walls	72	123,046	12/05/85		909	5,998	5,229	4,691	5,460	5,768	22,764	50,820	0.20	10,164
11 Dispose of Excess Soil	75	374,652	01/17/86			16,413	15,923	14,284	16,625	17,562	69,311	150,117	0.25	37,529
12 Acceleration	246	3,897,887	11/07/87						51,190	192,713	721,109	955,002	0.20	191,000
14 MPW Field Painting	120	973,059	08/07/86				33,084	37,096	43,179	45,612	180,016	338,989	0.10	33,899
16 Road Crossings/Ductbank	104	99,134	06/23/86			185	4,213	3,779	4,399	4,647	18,340	35,564	0.10	3,556
17 Thermal Manhole	258	337,510	03/27/87					6,698	14,977	15,821	62,439	99,935	0.23	22,985
18 Unsuitable Soil MPW Pkg Lot	161	110,750	12/01/86				774	4,222	4,915	5,191	20,489	35,591	0.18	6,406
19 Insulated Metal Wall Panels	291	462,322	02/16/88							16,031	85,530	101,560	0.40	40,624
21 Motorized Dampers	160	277,348	02/04/87					8,459	12,307	13,001	51,309	85,076	0.10	8,508
30 Temp Power Ltr dtd 3/25/85	41	6,883	03/27/85	217	357	336	293	262	305	323	1,273	3,366	0.10	337
												1,856,021		355,009

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2. Rowland, 20 October 1989.

3. David J. Rowland, Esq., Interview of 21 June 1990.

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614-585

Thesis
F2223 Fanshaw
c.1 Global settlement negotiation procedures, techniques and strategies for contracts in dispute.

Thesis
F2223 Fanshaw
c.1 Global settlement negotiation procedures, techniques and strategies for contracts in dispute.

Thesis 2223
Global settlement negotiation procedures
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